

# SmartCLOUD Services Terms and Conditions

## Definitions

1. In these Terms and Conditions:

**"Agreement"** means the agreement under which CPC will supply the Services, comprising these Terms and Conditions and the Order;

**"Charges"** means the one-off charge, Set Up Charge, Recurrent Charges, Usage Charge and other relevant charges in respect of or incidental to the Services supplied by CPC, payable by the Customer to CPC on an one-off or monthly basis or otherwise;

**"CPC"** means CITIC Telecom International CPC Limited (中信國際電訊(信息技術)有限公司), a company incorporated in Hong Kong;

**"Customer"** means the company or person who has requested to use the Services and to whom the Services are supplied by CPC;

**"CCF"** means Customer Configuration Form/Customer Configuration Change Request Form/Service Configuration Form/a prescribed form bearing a different name to be provided by CPC to the Customer for the Customer to fill in for the provisioning and/or configuration change of the Service(s);

**"Customer Environment"** means the network, system, information technology infrastructure, operating temperature, power and space of Customer as environment for or relating to the provision of the Services;

**"Customer Environmental Requirements"** means the document setting out the conditions of the Customer Environment necessary for the installation and operation of the Hardware, Software and/or Services, may be updated by CPC from time to time and provided to the Customer upon its request;

**"Customer Information"** means information of the Customer and includes information identifying the Customer, the use of the Services and expenditure on the Services by the Customer;

**"End User License Agreement"** means the applicable licence agreement of CPC's respective third party supplier(s), manufacturer(s) and/or licensor(s) that governs the use of the Services or the Hardware or the Software;

**"Failback"** means the process of restoring a system or network unless and until it is back to its original state before Failover;

**"Failover"** means the switching from Primary Site to Secondary Site upon failure or abnormal termination of the previously active server system or network;

**"Force Majeure Event"** means an event beyond the reasonable control of the affected Party, including without limitation natural disasters, acts of terrorism or war (whether declared or not), the mobilisation of armed forces, civil commotion or riot, industrial action or labour disturbance, currency restriction, embargo, governmental restraint, expropriation or prohibition, or a failure of a public utility or common carrier;

**"General Terms and Conditions"** means the general terms and conditions applicable to all Services contained hereinbelow;

**"Hardware"** means, among others, any equipment or any equipment and documentations being provided by CPC and/or its third party supplier(s) to the Customer, for or relating to the provision of the Services;

**"Hong Kong"** means the Hong Kong Special Administrative Region of the People's Republic of China;

**"Intellectual Property Rights"** or **"IPR"** means all vested, contingent and future intellectual property rights including without limitation title, copyrights, trademarks, trade names, logos, signs, service marks, patents and applications for the protection or registration of these rights and all renewals and

extensions thereof existing in any jurisdiction whether now known or created in the future;

**"Login User ID"** means one or more user identities, account numbers, personal identification numbers and/or codes, passwords, digital certificates and/or such other means of authentication as assigned by CPC to the Customer for its access to the User Interface;

**"Order"** means a written request from the Customer to CPC made in the form of quotation required by CPC and mutually agreed between the Parties for the provision of a particular Service(s);

**"Party"** means either CPC or Customer and **"Parties"** means both of them;

**"PRC"** means the People's Republic of China, excluding Hong Kong and Macau Special Administrative Region for the purposes of this Agreement;

**"Primary Site"** means the site that runs production workload in normal operating situation;

**"Recurrent Charges"** means the recurring charge(s) as set out in the Order that CPC imposes on the Customer for the provision of Services under this Agreement;

**"Regulatory Event"** means an amendment of or change in any applicable statute, law or regulation, or the grant of an injunction against a Party in relation to a breach or alleged contravention of the Telecommunications Ordinance or equivalent law or other applicable laws and regulations in another jurisdiction;

**"Scope of Works"** or **"SOW"** means the documentation (if any) as agreed by the Parties on a case-by-case basis which outlines the deliverables and specifications of certain types of Service(s) pursuant to this Agreement;

**"Secondary Site"** means the site that allows computing workload to continue to operate in the event of a disaster;

**"Security"** means a cash deposit (non interest-bearing) provided to CPC by the Customer to protect against non-payment of amounts due or to be due under this Agreement and/or to secure the Customer's performance of or compliance with the terms of this Agreement;

**"Service Acceptance Criteria"** means the document (if any) issued by CPC setting out the criteria for acceptance of the performance of a specific Service, may be updated by CPC from time to time and provided to the Customer upon its request;

**"Service Commencement Date"** is the date specified in the Special Conditions hereinbelow or, if not specified, such date shall be the date on which CPC notifies the Customer that the Service has finished service provisioning and is ready to use provided that no problem is reported by the Customer in the next three (3) working days after the said notification;

**"Service Levels"** means the levels of service (if applicable) that CPC will aim to provide and such other levels of service in relation to a specific Service(s), which may be amended/supplemented/updated by CPC from time to time and provided to the Customer upon its request;

**"Service Period Commitment"** means the minimum period of time the Customer agrees to commit itself to subscribe to certain Services from CPC which will commence on the Service Commencement Date and shall continue for the period as set out in the Order or, if not stated, such period shall be twelve (12) months;

**"Service(s)"** means any (i) SmartCLOUD Compute Service(s); (ii) SmartCLOUD C2C Backup Service(s); (iii) SmartCLOUD C2C Replication Service(s); (iv) SmartCLOUD Global Server Load Balancing Service(s); (v) SmartCLOUD Local Server Load

The parties hereto acknowledge and agree that the delivery of a signed electronic copy through electronic means shall be sufficient and the physical delivery of a signed original of these Terms and Conditions is not required. Upon signing these Terms and Conditions, each party hereto agrees that these Terms and Conditions of the Agreement shall be legally binding on it.

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Balancing Service(s); (vi) SmartCLOUD Snapshot Storage Service(s); (vii) SmartCLOUD vONE Service(s); (viii) SmartCLOUD V2C Replication Service(s); (ix) SmartCLOUD VC Service(s); (x) SmartCLOUD P2C Replication Service(s); (xi) SmartCLOUD M@il Service(s); (xii) SmartCLOUD DaaS Service(s); (xiii) SmartCLOUD Professional Service(s); (xiv) SmartCLOUD A2C Backup Service(s); and/or (xv) other relevant services to be provided to the Customer by CPC, as specified in these Terms and Conditions, the Order and the SOW (if any);

**"Set Up Charge"** means the charge(s) as set out in the Order for the installation and set up of Hardware, Software, Services and/or facilities expressly specified in the Order to be supplied by CPC that are necessary for or facilitating the Customer's use of the Services;

**"SmartCLOUD A2C Backup Service(s)"** means any offsite backup service which is used to backup a Customer's virtual machine, physical machine and/or cloud applications to a SmartCLOUD platform of CPC to be shared among CPC's customers, provided to the Customer by CPC as specified in these Terms and Conditions and the Order;

**"SmartCLOUD C2C Backup Service(s)"** means any SmartCLOUD backup and recovery service provided to the Customer by CPC as specified in these Terms and Conditions and the Order;

**"SmartCLOUD C2C Replication Service(s)"** means any replication service which is used to replicate a Virtual Machine from a Primary Site to a Secondary Site, and any recovery service which is used to restore the original state of a Virtual Machine through Failover and Failback, which is/are provided to the Customer by CPC as specified in these Terms and Conditions, the Order and the SOW (if any);

**"SmartCLOUD Compute Service(s)"** means any public cloud infrastructure hosting service, which the platform is built to serve multiple customers, provided to the Customer by CPC as specified in these Terms and Conditions and the Order;

**"SmartCLOUD DaaS Service(s)"** means any cloud virtual desktop infrastructure hosting service provided to the Customer by CPC as specified in these Terms and Conditions, the Order and the SOW (if any);

**"SmartCLOUD Global Server Load Balancing Service(s)"** means any service, which is used for distributing workload among servers which are located at different data centers on different locations, provided to the Customer by CPC as specified in these Terms and Conditions and the Order;

**"SmartCLOUD Local Server Load Balancing Service(s)"** means any service, which is used for distributing workload among Virtual Machines and/or physical servers supplied to Customer by CPC which are located at the same data center, provided to the Customer by CPC as specified in these Terms and Conditions and the Order;

**"SmartCLOUD M@il Service(s)"** means any cloud based email hosting service provided to the Customer by CPC as specified in these Terms and Conditions and the Order;

**"SmartCLOUD P2C Replication Local Appliance"** is a hardware appliance provided by CPC to Customer for or relating to the provision of the SmartCLOUD P2C Replication Service(s), which is installed at the premise(s) where the Customer's physical server is located;

**"SmartCLOUD P2C Replication Service(s)"** means any replication service which is used to replicate Customer operated physical machine(s) from a Primary Site to a Secondary Site, and any recovery service which is used to restore the original state of a Customer operated physical machine to a Virtual Machine through Failover, which is/are provided to the Customer by CPC as specified in these Terms and Conditions, the Order and the SOW (if any);

**"SmartCLOUD Professional Service(s)"** means any operating system and/or application management service, which is provided to the Customer by CPC, as specified in these Term and Conditions, the Order and the SOW (if any);

**"SmartCLOUD Snapshot Storage Service(s)"** means any service, which is used for storing snapshot(s) of Virtual Machine exclusively, provided to the Customer by CPC as specified in these Terms and Conditions and the Order;

**"SmartCLOUD V2C Replication Service(s)"** means any replication service which is used to replicate a virtual machine from a Primary Site to a Secondary Site, and any recovery service which is used to restore the original state of a virtual machine through Failover and Failback, which is/are provided to the Customer by CPC as specified in these Terms and Conditions, the Order and the SOW (if any);

**"SmartCLOUD VC Service(s)"** means any cloud based video conference managed service, provided to the Customer by CPC as specified in these Terms and Conditions and the Order;

**"SmartCLOUD vONE Service(s)"** means any private cloud infrastructure hosting service, which the platform is built to serve one customer only, provided to the Customer by CPC as specified in these Terms and Conditions, the Order and SOW;

**"Software"** means any software incorporated into the Hardware or provided separately (together with any relevant documentation) by CPC and/or its third party supplier(s) to the Customer for or relating to the provision of the Services;

**"Special Conditions"** means the service specific conditions applicable to the Services contained hereinbelow as different Service Schedule(s) after the General Terms and Conditions;

**"Terms and Conditions"** means the General Terms and Conditions and the Special Conditions;

**"Usage Charge"** means the charge(s) that CPC may impose on the Customer for the resource usage on the Service(s) expressly specified in the Order;

**"User Interface"** means a web-based portal or other form of user interface established for the Customer's on-line access to certain Service(s) as prescribed by CPC;

**"Virtual Machine"** means a virtual server composed of Customer's subscribed virtual CPU, memory, storage, port and network under the Service(s), which are supplied by CPC; and

**"VMWare Tools"** means a suite of utilities that enhances the performance of the virtual machine's guest operating system and improves management of the virtual machine.

**Interpretation**

2. In this Agreement, unless the contrary intention appears:
  - (a) headings are for convenience only, and do not affect interpretation;
  - (b) a word importing the singular includes the plural and vice versa;
  - (c) if a word is defined, another part of speech has a corresponding meaning; and
  - (d) a reference to:
    - (i) a day, week or month means a calendar day, week or month;
    - (ii) a Party to this Agreement or to any other document or agreement referred to in this Agreement includes a successor or permitted assign of that Party;
    - (iii) a document includes any amendment or supplement to, or replacement or notation of, that document;
    - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity;
    - (v) payment, paid or similar words mean that the funds are made available for immediate use by the payee; and
    - (vi) any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations,

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proclamations, ordinances or by-laws amending, varying, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

## **General Terms and Conditions**

### **Supply of Services**

3. CPC will provide the Services to the Customer in accordance with this Agreement. If there is any inconsistency between a provision of these Terms and Conditions and any part of this Agreement, these Terms and Conditions shall prevail.
4. This Agreement commences from the earlier of CPC's notification to the Customer of its acceptance of the Order or the date on which CPC commences to supply the Services. Unless provision of a Service is terminated in accordance with these Terms and Conditions or replaced/renewed by a new agreement or otherwise specified in the Order to be automatically terminated upon expiry of the Service Period Commitment, provision of that Service shall continue after the expiry of the Service Period Commitment and these Terms and Conditions and other provisions of this Agreement (save and except for the provisions in connection with any special offer/waiver of/discount on Recurrent Charges and/or any other promotional event for the Services ("**Special Offer**")) in so far as they are applicable shall continue to apply to that Service. For the avoidance of doubt, provision of Special Offer by CPC to the Customer shall no longer be applicable and lose its effect after the expiry of the Service Period Commitment as if such Special Offer had not been made.
5. CPC may sub-contract third parties to perform any of its obligations under this Agreement.
6. CPC shall make reasonable efforts to meet any applicable Service Levels.
7. The Customer shall be responsible for, and shall provide, at its own costs, all information, assistance, cooperation, equipment, material or facilities and third parties' services or network that are necessary for CPC to provide the Services and/or for the Customer to access the Services and that are not expressly specified in the Order to be supplied by CPC.

### **Charges and Payment**

8. CPC will bill the Customer for the Services commencing on the Service Commencement Date and invoice the Customer on a monthly basis (except one-off charges) and/or immediately on termination of this Agreement or the Services by electronic mail or post. Any omission on the part of CPC to issue invoice in the prescribed month shall not constitute a waiver by CPC of any Charges or part thereof.
9. The Customer shall pay the invoiced Charges to CPC on or before the 30<sup>th</sup> day after (and exclusive of) the invoice date ("**Due Date**"). In the event that after expiry of the Service Period Commitment, CPC continues to provide the Services to the Customer, or the Customer continues to use the Services, the Customer's obligation to pay Charges under this Clause shall survive and continue to be enforceable after such expiry.
10. If the Customer does not pay the Charges by the Due Date:
  - (a) CPC shall (without prejudice to its other rights and remedies) have the right to charge the Customer interest calculated at the rate of 1.5% per month on the outstanding balance of Charges from the Due Date until the date on which payment in full is made; and/or
  - (b) CPC may (without prejudice to its claim for interest as aforesaid and any other rights and remedies) suspend the provision of any Service to the Customer and/or terminate this Agreement (either in its entirety, or in respect of a particular Service) in accordance with Clause 31.

11. Charges are exclusive of any applicable taxes (including without limitation consumption taxes, business taxes, goods and services taxes, value added taxes, other national, regional or local taxes, tariffs and impositions) imposed by any governmental authority or regulatory body relating to the Services ("**Taxes**"). Taxes shall be borne by the Customer. If the Customer is required to make any deduction, withholding or payment on any amount payable by the Customer to CPC relating to the Services, such amount shall be increased such that after making such deduction, withholding or payment, CPC receives an amount equal to what it would have received as if such deduction, withholding or payment had not been made.

### **Security**

12. In the event that the Customer fails to comply with Clause 9 twice, the Customer (upon notification by CPC) shall within fourteen (14) days of such notification provide CPC with a Security in the amount and form specified by CPC, and shall maintain the Security in full throughout the term of this Agreement.
13. If any payments remain unpaid for thirty (30) days following the Due Date or if CPC suffers loss due to the Customer's default, CPC may, on notice to the Customer, apply the whole or any part of the Security in or towards settling the payments or making good the loss. In case of any shortfall of Security due to CPC's application of Security or otherwise, the Customer shall make up the shortfall within seven (7) days of demand by CPC.
14. Subject to Clause 13, on termination of this Agreement the Security (less any bank fees or other costs incurred by CPC associated with holding or applying the Security) shall be returned without interest to the Customer within fourteen (14) days after such termination.

### **Customer Obligations**

15. The Customer shall not use the words "CITIC TELECOM CPC" and/or "CITICTEL CPC" or any words confusingly similar to the same, and may not make any public statement in relation to the Services or any of the Customer's services that identifies CPC or suggests any relationship between the Customer and CPC, without CPC's prior written permission.
16. The Customer shall, and shall procure relevant Parties to, observe and comply with the following requirements in relation to the Services and use of the Services: (i) to comply with all applicable laws of any relevant jurisdiction and also all regulations and rules promulgated or administered by the authority governing telecommunication industry (including but not limited to all privacy laws and regulations with respect to personally identifiable information processed, used, sent or received by Customer), related government departments or regulatory authorities of the relevant jurisdiction; (ii) not to engage in any activities or actions that may infringe or misappropriate the IPR of others without appropriate consent and/or permission; (iii) not to use or distribute third party's proprietary and/or confidential information without appropriate consent and/or permission; (iv) not to use the Services in a manner, including without limitation to launch port scanning, attack the information security, distribute spam mail or engage in similar acts, which interferes with the use of telecommunications and computing services on the CPC network or any interconnected network by any person; and (v) not to use the Services to store, transmit or distribute:
  - (a) any material which is defamatory, threatening, offensive, abusive or obscene or causes nuisance or annoyance to others;
  - (b) any unsolicited advertising or promotional material; and
  - (c) any virus, worm or Trojan horse software or any software for damaging or compromising the security of other computers, networks, systems or websites.
17. The Customer shall fully cooperate with and obtain all necessary permit or licence to allow CPC, its employees,

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CPC	Customer

subcontractors and agents access and entry to the premises where the Services is provided in relation to the provision and maintenance of such Service by CPC under this Agreement.

**Hardware and Software Handling**

- 18. The Hardware and Software are properties of CPC and/or its third party supplier(s) and are rented/licenced to the Customer for CPC's provisioning of the Services. The Customer shall not, nor attempt to, sell, charge or encumber the Hardware and Software. The Customer shall be liable to pay the market price of the Hardware and/or Software as determined by CPC as replacement cost for any and all loss or damage to the Hardware and/or Software (normal fair wear and tear excepted) whenever the Hardware and/or Software are delivered to the Customer or under its control. The Customer shall notify CPC immediately of any such loss or damage. The Customer agrees to house the Hardware and Software in a safe and serviceable environment and in accordance with reasonable instructions given by CPC from time to time.
- 19. The Customer shall not, nor permit any other Party to, modify, decompile, unlock, reverse-engineer, disassemble, incorporate any other works into, create derivatives of, or copy any portion of, or otherwise translate the Hardware and/or Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Hardware and Software by whatever means or use the Hardware and/or Software for the benefit of any third party (except as permitted in these Terms and Conditions). The Customer shall not infringe, whether directly or indirectly, any third party's IPR and/or other rights of and in the Hardware and/or Software. The Customer shall not remove any names, designations or notices from any Hardware, Software and/or relevant documentations. The Customer shall ensure that the Hardware and Software will not be repaired or disconnected by anyone other than CPC and its authorised agents without CPC's prior written consent except for disconnection of the Hardware and/or Software in the event of an emergency with notice to CPC immediately after such disconnection or a disconnection of the Hardware and/or Software pursuant to Clause 20 below.
- 20. Upon the termination of a Service under this Agreement, the Customer shall stop using the relevant Hardware and/or Software which shall also be, within seven (7) days from such termination and at its own costs, uninstalled, disconnected and/or returned in same condition as it was / they were when first delivered to the Customer, normal fair wear and tear excepted, with proper packing to CPC's office in Hong Kong or other locations where the Services are provided as advised by CPC.
- 21. If the Customer fails to uninstall, disconnect and/or return the Hardware and/or Software as set out in Clause 20 and/or continue to use the same, CPC will charge the Customer for, and the Customer shall within fourteen (14) days from the date of demand pay, the market price as determined by CPC as replacement cost of the Hardware and/or Software.

**Scope of Warranty**

- 22. Except as specifically provided in this Agreement, CPC makes no warranty or representation, whether express, implied, statutory or otherwise, to the Customer as to quality, non-infringement, merchantability or fitness for any particular purpose of any of the Services, Hardware and/or Software provided herein; the functions or features contained in the Services, Hardware and/or Software will be uninterrupted or error free; all defects that may exist therein will be corrected; or any other matter in relation to the Services, Hardware and/or Software provided herein. All such warranties or representations are hereby expressly excluded, limited or disclaimed to the fullest extent permitted by the applicable laws or otherwise deemed withdrawn prior to the Parties' entry to this Agreement. The Customer acknowledges that it has not

relied upon any warranty or representation in entering into this Agreement.

- 23. The Services are not designed or intended for use in life-critical activities, including without limitation (i) the design, construction, operation or maintenance of any nuclear facility; (ii) navigating or operating aircraft and matters involved air traffic; and (iii) operating life-support or life-critical medical equipment, and CPC shall not be responsible for or liable to the Customer and any third party in any way for such uses.

**Limitation of Liability**

- 24. The provisions in this Agreement that exclude or limit the Parties' liability shall apply to the maximum extent permitted by law.
- 25. Except in relation to liability of CPC arising from death or personal injury due to the negligence of CPC or otherwise provided for herein, in no event shall CPC or its directors, employees, subcontractors or agents be liable to the Customer for any loss or damage whatsoever (including without limitation special, direct, indirect, incidental, consequential, exemplary, or punitive damages; or loss of business/opportunity/chance; or loss of revenue/profits/data/information/savings/goodwill/reputation) in respect of any matter whatsoever arising from or in connection with this Agreement, the Services, use or inability to use (for whatever reasons) the Services, and/or any products, hardware, software or documentation under this Agreement or the Services.
- 26. If any warranties or conditions or obligations which by virtue of any applicable law cannot be excluded, restricted or modified or which apply only to a limited extent, then to the extent to which CPC is entitled to do so, the aggregate liability of CPC shall be limited to, at CPC's option:
  - (a) if the liability relates to the Service(s), supplying of the relevant Services again or the payment of the cost of having the relevant Services supplied again; and
  - (b) if the liability relates to the Hardware and/or Software, the repair or replacement of Hardware and/or Software or payment of the cost of having the relevant Hardware and/or Software repaired or replaced.
- 27. In any event the aggregate amount of liability of CPC for all claims under this Agreement shall (regardless of any contrary provisions hereof and regardless of the form of action, whether in contract, tort (including without limitation negligence and strict liability), equity or any other cause of action or legal theory) be limited to the total of three (3) months' relevant Recurrent Charges with respect to the relevant Services under this Agreement.

**Warranty and Indemnity**

- 28. The Customer shall indemnify CPC against all claims, losses, damages, costs, charges and expenses (including legal costs on a full indemnity basis) suffered by CPC arising in any jurisdiction out of:
  - (a) the use or attempted use of the Services by the Customer, any of its employees and/or any third party (whether authorised or not) in breach of these Terms and Conditions;
  - (b) CPC's staff gaining access to or staying in any Customer's premises or designated places necessitated by or incidental to the supply or maintenance of the Services, to the extent that any such claim, loss or damage is caused or contributed to by the act or omission or negligence of the Customer or its employees, contractors, agents or authorised persons;
  - (c) any claim arising from the death of or personal injury to any person, to the extent the death or personal injury is caused or contributed to by the act or omission or negligence of the Customer or its employees, contractors, agents or authorised persons; and
  - (d) any claim arising from violation of Clauses 16, 19 and 29.

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29. The Customer warrants that its use of the Services will not directly or indirectly infringe any third party's rights or breach any law in any jurisdiction.

**Use of Customer Information**

30. The Customer consents to CPC:
- (a) collecting, retaining and using Customer Information for any of the following purposes:
    - (i) preparing invoices and operating the Customer's account, including processing any payment instructions, direct debit or credit facilities;
    - (ii) to facilitate connection to the CPC network through the exchange of information with other companies operating within the network;
    - (iii) meeting CPC's regulatory and commercial obligations, including interconnection;
    - (iv) verifying the Customer's continued creditworthiness;
    - (v) development and improvement of CPC's services; and
    - (vi) providing Customer with updates and/or notifications about the Services; and
  - (b) disclosing such Customer Information to any of the following parties to be used for the following purposes:
    - i) to any agent, subcontractor or third party supplier who provides administrative, telecommunications, computer, payment or securities clearing or other services to CPC in connection with the operation of CPC's business;
    - ii) to the Communications Authority of Hong Kong or other equivalent government agency or any competent authority or any regulatory body or any person or office where such disclosure is required by the Telecommunications Ordinance or equivalent law or other applicable laws and regulations for the discharge of obligations by CPC or its group companies;
    - iii) to any person which is necessary for provision of Service including a group company of CPC which owes a duty of confidentiality or has undertaken to keep such information confidential;
    - iv) to credit reference agencies and, in the event of default, debt collection agencies;
    - v) to any actual or proposed assignee of CPC or transferee of CPC's rights or obligations or business, professional advisors and/or any other person (including any group company of CPC) necessary or required for the purpose of such intended assignment/transfer, who owes a duty of confidentiality to CPC or has undertaken to keep such information confidential;
    - vi) to any third party supplier(s) in acquiring Hardware and/or Software in connection with the Services; and
    - vii) to auditors of CPC or CPC's third party supplier(s) relating to Customer's subscription of the licence to use the Services, Hardware and/or Software provided that CPC or the third party supplier(s) shall, as the case may be, procure any such auditors to observe the duty of confidentiality in relation to such Customer Information; and
  - (c) transferring Customer Information from one jurisdiction to another for any of the purposes set out in sub-clauses (a) and (b) of this Clause.

**Suspension and Termination**

31. In the event that:
- (a) the Customer fails to remedy any breach of the terms of this Agreement, which is capable of remedy, within fourteen (14) days (or such shorter notice as the circumstances may require as determined by CPC) after CPC's written demand for remedying the breach by the Customer;

- (b) an administrator, receiver, liquidator or trustee is appointed by the Customer or the Customer resolves by resolution for any voluntary winding up or is subject to winding up proceedings, or the Customer enters into any settlement, compromise, arrangement with creditors;
- (c) the Customer ceases operation without a successor or is unable to pay its debts when they fall due;
- (d) the Customer commits a material breach or non-remediable breach of the terms of this Agreement; or
- (e) CPC receives a complaint that all or any of the contents stored, transmitted or distributed under the Services are unlawful or infringe the IPR or other rights of any third party and such complaint continues or remains unresolved between the Customer and complainant for two (2) days (or such shorter notice as the circumstances may require as determined by CPC absolutely) after the Customer is notified of such complaint,

CPC may (without prejudice to any of its other rights and remedies):

- (i) suspend the Customer's access to and use of any of the Services for such period as CPC may deem fit or, in relation to a breach capable of remedy, until such breach is remedied, but without prejudice to CPC's right of termination in sub-clause (ii) of this Clause; and/or
- (ii) terminate this Agreement (either in its entirety, or in respect of a particular Service).

If a Service is terminated under sub-clause (ii) of this Clause, the Customer shall, without prejudice to any other rights, remedies and/or claim for further damages available to CPC, compensate and pay CPC (for such termination) the following (as the case may be):

- (I) if terminated before expiry of Service Period Commitment, 100% of the relevant Recurrent Charges payable for the remainder of the Service Period Commitment or two (2) months' relevant Recurrent Charges, whichever is higher; or
- (II) if terminated after expiry of Service Period Commitment, two (2) months' relevant Recurrent Charges.

32. Reinstatement of any Service suspended in accordance with Clause 31 will be at the sole option of CPC and upon such terms and conditions as CPC may determine.

33. Prior to the Service Commencement Date, if either
- (a) the Customer cancels this Agreement (either in its entirety, or in respect of a particular Service) by serving on CPC cancellation notice in writing prior to the Service Commencement Date; or
  - (b) the Services are deemed (as determined in the sole opinion of CPC) to have been cancelled by the Customer if the Customer fails to cooperate with or allow CPC to start providing such Services within six (6) months after the execution of the Order,

CPC shall have the right to require the Customer to compensate CPC, and the Customer shall on demand by CPC pay, as liquidated damages (for such cancellation) but not as penalty, either (i) an amount representing all one-off charges, Set Up Charge and two (2) months' relevant Recurrent Charges; or (ii) any charges/cancellation charges paid and/or payable by CPC to any third party supplier in respect of any capacity, equipment, software, services, licence fees and/or other resources acquired by CPC for the purpose of supplying Services to the Customer, whichever is higher.

34. Either Party may terminate this Agreement or a particular Service on two (2) months' prior notice in writing subject to compensation as set out in Clause 35 provided that such termination by the Customer is invalid and has no effect unless Customer serves on CPC a duly completed and signed service termination notice (in such form as prescribed by CPC) receipt of which must be acknowledged by CPC.

35. If a Service is terminated under Clause 34 by the Customer, except in the case of material breach by CPC, the Customer

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shall compensate and pay CPC (for such termination) the following (as the case may be):

- (a) if terminated before expiry of Service Period Commitment, 100% of the relevant Recurrent Charges payable for the remainder of the Service Period Commitment plus, if the period between the issue date of termination notice and the expiry of Service Period Commitment is less than two (2) months, 100% of the relevant Recurrent Charges for the period between expiry of Service Period Commitment and expiry of two (2) months from the issue date of termination notice; or
  - (b) if terminated after expiry of Service Period Commitment, 100% of the relevant Recurrent Charges of that part of the required notice period which Customer fails to give under Clause 34.
36. On termination of this Agreement or any Services, the licence relating to and any rights granted to the Customer in respect of the relevant Services will be immediately terminated and revoked and all Charges for the relevant terminated Services shall, notwithstanding the Due Date, become immediately due and payable and the Customer shall forthwith settle all Charges for the relevant terminated Services and any interest payable in accordance with Clause 10(a).
37. Termination of this Agreement or any Services shall be without prejudice to any antecedent rights or obligations of any Party accrued or incurred prior to such termination.
38. CPC may suspend provision of the Services, without liability or compensation to the Customer, where necessary in CPC's reasonable judgment to:
- (a) repair, maintain or upgrade any part of the CPC's network, system, software, equipment, the Hardware or Software used in providing the Services;
  - (b) comply with the lawful directions of a governmental agency, regulatory body or emergency service; or
  - (c) prevent fraud, crime, attack, damage, virus, abuse or interference to CPC's network, system, software or equipment.
39. CPC acknowledges the importance of the Services to the Customer. If CPC exercises its rights under Clause 38, it will endeavour to provide such prior notice by writing, email or verbally as is reasonably practicable and permissible in the circumstances, and will make reasonable efforts to cooperate with the Customer in relation to any such suspension and minimise the inconvenience caused to Customer.

#### Dispute Resolution

40. Except where urgent interlocutory relief is sought, if a dispute arises out of or in relation to this Agreement, or to the breach, termination, validity or subject matter of this Agreement, or as to any claim in tort or in equity, the Parties to this Agreement and to the dispute shall endeavour in good faith to settle the dispute within fourteen (14) days of the dispute arising before commencement of any proceedings in a court of law.

#### General

41. If the rights or obligations of either Party under this Agreement are materially affected by a Regulatory Event:
- (a) the Party affected by the Regulatory Event shall not be taken to have breached this Agreement due to any action or inaction of that Party as a consequence of the Regulatory Event; and
  - (b) the Parties agree to negotiate in good faith to vary this Agreement to reflect or accommodate the Regulatory Event.

42. If either Party fails to comply with or observe any term of this Agreement, and such failure is caused by a Force Majeure Event, that Party shall notify the other Party as soon as practicable, and use all reasonable endeavours to avoid, mitigate and remedy the consequences of the Force Majeure Event.
43. Neither Party is liable to the other by reason of any failure in performance under this Agreement to the extent that such failure results from a Regulatory Event or Force Majeure Event, unless that failure is a failure to pay Charges.
44. The provisions of this Agreement and the rights and obligations created hereunder are intended for the sole benefit of the Parties hereto, and do not create any right, claim or benefit on the part of any other person not a Party to this Agreement. The Contracts (Rights of Third Parties) Ordinance (Chapter 623) of the laws of Hong Kong shall not apply.
45. If any provision (or any part thereof) of this Agreement is found to be invalid, that provision (or any part thereof) shall be severed from this Agreement and the remaining provisions or parts shall remain in full force and effect.
46. Any provision of this Agreement which is expressly provided to survive after termination of this Agreement, or capable of being performed, observed or honoured after such termination or which, by reason of its nature, context, or necessary implication, should have reasonably survived after such termination, shall survive and continue to take effect and be enforceable after such termination.
47. No waiver by either Party of a breach of any provision of this Agreement, nor delay, indulgence or omission to exercise any right, shall constitute a waiver of any such right or breach or default by the other Party.
48. This Agreement constitutes the entire agreement between the Parties and supersedes all and any prior agreements, arrangements and understandings of the Parties in relation to its subject matter and the Customer acknowledges and confirms that it has not relied on any information other than those expressly stated in this Agreement. No amendment, modification or supplement of these Terms and Conditions or any Order shall be valid unless such amendment, modification or supplement is in writing and signed by authorised representatives of both Parties.
49. This Agreement is governed by the laws of Hong Kong and the Parties irrevocably agree to submit any dispute arising under or in relation to this Agreement to the exclusive jurisdiction of the courts of Hong Kong.
50. The Customer shall not assign this Agreement or transfer any of its rights or obligations without the prior written consent of CPC.
51. Consent to any assignment or transfer may be made subject to such reasonable conditions as CPC may require, including without limitation that the Customer or the assignee or transferee (as may be determined by CPC at its discretion) will provide and maintain a Security in relation to payment of Charges upon notification by CPC.

### **Special Conditions**

#### **Service Schedule 1 – For all Services**

- 1.1 CPC grants the Customer a revocable, non-transferable, non-sublicensable and non-exclusive licence to use the Services, Hardware and/or Software only during the term of this Agreement. The Customer shall not resell, transfer, rent, sub-licence or allow others in whatsoever manner, whether for consideration or not, to use or share the use of the Services, Hardware and/or Software without prior written consent of CPC.

The parties hereto acknowledge and agree that the delivery of a signed electronic copy through electronic means shall be sufficient and the physical delivery of a signed original of these Terms and Conditions is not required. Upon signing these Terms and Conditions, each party hereto agrees that these Terms and Conditions of the Agreement shall be legally binding on it.

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- 1.2 The Customer acknowledges and agrees that upon receipt of the Service(s), Hardware and/or Software by the Customer, the Customer is subject to the End User License Agreement and/or all documentations or terms and conditions provided in the Hardware and/or Software packaging by such third party supplier(s) (if any) and the Customer accepts full responsibility for any non-observance thereof.
- 1.3 The Customer represents and warrants that (i) it has/has obtained the right to all the contents (including without limitation software and files such as documents, images and audio/video files) hosted and/or stored under the Service(s); and (ii) all such contents are lawful and do not infringe any third party's rights.
- 1.4 The Customer acknowledges that certain environmental conditions are necessary for the operation of Hardware, Software and/or Services. Accordingly, the Customer must comply with the applicable Customer Environmental Requirements. The Customer shall be liable to CPC for all claims, losses, damages, costs, charges, and expenses, including without limitation legal costs, arising from or in connection with the Customer's failure to comply with the Customer Environmental Requirements.
- 1.5 In connection with the Customer's use of the Services and where applicable, the Customer may be provided with Login User ID for its access to the User Interface. The User Interface and Login User ID may be used by Customer for accessing certain on-line services. The Customer shall at all times keep its Login User ID strictly confidential and shall take all reasonable precautions to prevent unauthorised use, misuse, disclosure or compromise of its Login User ID or the User Interface. CPC is entitled to rely solely on the Login User ID as conclusive evidence of identity and authority without carrying out any further verification work. The Customer shall be liable for, and hold CPC harmless from, and indemnify CPC, for all activities, deeds, dealings and consequences from or through the use (whether authorised or not) of the Login User ID and the User Interface whether by the Customer or others. The Customer shall be solely responsible for all Charges incurred through the use or purported use of the Service(s) (regardless of whether it is authorised or illegal log-ins) via the Login User ID.
- 1.6 The Customer acknowledges and agrees that upon receipt of the Login User ID by the Customer, CPC shall not be responsible for and is not obliged to keep any records of or to remind the Customer of the Login User ID.
- 1.7 Modifications or changes made through the User Interface are deemed to be valid instructions from the Customer.
- 1.8 If the Customer requests for a change of the Service Commencement Date (whether such Service Commencement Date is agreed or deemed), then CPC may at its sole discretion agree such change in writing and subject to payment of administration and/or additional charge to CPC by Customer as advised by CPC.
- 1.9 Upon termination of a particular Service(s), CPC shall be entitled to erase the data and/or files stored under the relevant Service(s) without any prior notification and without any liability to the Customer and any third party. The Customer acknowledges and agrees that all data and/or files erased are not recoverable. To avoid loss of any data and/or file under such erasing exercise, Customer hereby agrees to backup and/or archive such data and/or files from time to time at its own costs.
- 1.10 The Customer shall not withhold from CPC any information (i) pertinent to CPC's ability to provide, or the Customer's ability to receive, the Services; or (ii) required by or in furtherance of compliance with the applicable laws and/or court orders, failing which CPC is entitled to, without prejudice to any of its other rights and remedies, deny the respective Service(s) to the Customer. Such information includes without limitation software licenses and administrative credentials associated with the

Service(s). The Customer represents that any such information provided to CPC will be timely, accurate and complete to the best of the Customer's ability.

- 1.11 In connection with any request for provisioning and/or configuration change of the Service(s), the Customer shall provide sufficient information to the satisfaction of CPC by duly completing the CCF and submit the same to CPC in order to enable CPC to provide the Service(s). If CPC agrees to perform such configuration change, the Customer agrees that it shall be wholly responsible for any security, service performance or accessibility issues that may arise from such configuration change.
- 1.12 The Customer acknowledges and agrees to fully co-operate with CPC on any provisioning, maintenance, upgrade, downgrade, support and decommission of the Service(s), including the provision of any required information and provide approvals or consent to CPC in a timely manner which is necessary for CPC for the provisioning, maintenance and support of the Service(s).
- 1.13 The Customer is responsible to take all reasonable steps to mitigate the risks inherent in the use of the Service(s), including but not limited to the loss of Customer's data. CPC shall not be responsible to backup any such data (unless otherwise agreed between the Parties).
- 1.14 The Customer acknowledges and agrees that CPC will not provide any technical support for the Hardware and/or Software (including but not limited to configuration change, firmware update and/or signature update, Hardware failure replacement, maintenance and vendor support) after the expiration of the relevant Service Period Commitment.

**Service Schedule 2 – For SmartCLOUD Compute Service(s)**

- 2.1 The Customer shall through the access to the User Interface (i.e. SmartCLOUD Compute management portal) as mentioned in Clause 1.5 install VMWare Tools to all Virtual Machines and update the VMWare Tools regularly and/or as advised by CPC from time to time.
- 2.2 Customer shall be responsible for any configuration change, backup and restore of the SmartCLOUD Compute Service(s) through the access to the User Interface.

**Service Schedule 3 – For SmartCLOUD C2C Backup Service(s)**

- 3.1 The Service Commencement Date of SmartCLOUD C2C Backup Service(s) is the date on which the first scheduled backup of any of the Virtual Machines is successfully completed and email notification of such completion is sent to Customer. If the Customer subscribed for more than one (1) Virtual Machine, the Service Commencement Date of the first Virtual Machine shall apply to all other Virtual Machines.
- 3.2 Customer must ensure that all Virtual Machines are properly powered on, properly configured and in normal operation during the backup window. CPC shall not be held liable for any of the Virtual Machines operated under the SmartCLOUD C2C Backup Service(s) that is unable to be backed up and restored if Customer fails to ensure the activities stated in this Clause.
- 3.3 Upon completion of each backup, CPC will send an email alert to the Customer indicating whether the SmartCLOUD C2C Backup Service(s) is successfully completed. Customer must respond in a timely manner to email alerts from CPC in the event that the backup fails in order to resolve the backup failure. CPC shall not be held liable for the backup failure and the data stored under the SmartCLOUD Compute Service(s) and/or SmartCLOUD vONE Service(s) not being backed up if Customer fails to respond the email alerts stated in this Clause.
- 3.4 Customer must ensure that there is enough free space for Virtual Machine level restore. CPC shall not be held liable for the Virtual Machine stored under the SmartCLOUD C2C Backup Service(s) but unable to be restored if Customer fails to fulfil the requirements stated in this Clause.

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3.5 CPC will provide the backup and recovery service(s) of the SmartCLOUD C2C Backup Service(s) upon Customer's request. Customer acknowledges and agrees that the number of use of the backup and recovery service(s), and the number of changes in configuration of the SmartCLOUD C2C Backup Service(s) stated in the CCF are limited to the number of service tokens stated in the Order per Virtual Machine on a yearly basis commencing from the Service Commencement Date (as set out in Clause 3.1) of the SmartCLOUD C2C Backup Service(s). Any unused service tokens in any of the aforesaid 12-month period cannot be carried over to the next 12-month period(s) (if any) and shall be forfeited. Any use of backup and recovery service(s), and/or any number of changes in configuration of the SmartCLOUD C2C Backup Service(s) stated in the CCF in any of the aforesaid 12-month period which exceeds the number of service tokens stated in the Order shall be subject to additional charge as agreed by the Parties. For the avoidance of doubt, (i) each of one backup, one recovery and one change in configuration of the SmartCLOUD C2C Backup Service(s) stated in the CCF shall respectively be counted as one service token; (ii) any unused service token shall be forfeited upon the expiry of the relevant 12-month period; (iii) any backup and recovery service(s), and/or any change in configuration of the SmartCLOUD C2C Backup Service(s) stated in the CCF after the expiry of the relevant Service Period Commitment shall be subject to additional charge as agreed by the Parties; and (iv) the number of service tokens stated in the Order shall be reduced on a pro-rata basis if the remaining period before expiry of the relevant Service Period Commitment or termination of the SmartCLOUD C2C Backup Service(s) beyond the aforesaid 12-month period(s) is less than 12 months, and any use of the service tokens in such period exceeding the corresponding number of service tokens shall be subject to additional charge as agreed by the Parties.

**Service Schedule 4 – For SmartCLOUD C2C Replication Service(s)**

4.1 The Service Commencement Date of SmartCLOUD C2C Replication Service(s) is the date on which the first scheduled replication of any of the virtual machine is successfully completed.

4.2 CPC will provide the recovery service(s) of the SmartCLOUD C2C Replication Service(s) upon Customer's request and in accordance with SOW (if any). Customer acknowledges and agrees that the number of use of the recovery service(s) and the number of changes in configuration of the SmartCLOUD C2C Replication Service(s) stated in the CCF are limited to the number of service tokens stated in the Order per Virtual Machine on a yearly basis commencing from the Service Commencement Date (as set out in Clause 4.1) of the SmartCLOUD C2C Replication Service(s). Any unused service tokens in any of the aforesaid 12-month period cannot be carried over to the next 12-month period(s) (if any) and shall be forfeited. Any use of recovery service(s) and/or any number of changes in configuration of the SmartCLOUD C2C Replication Service(s) stated in the CCF in any of the aforesaid 12-month period which exceeds the number of service tokens stated in the Order shall be subject to additional charge as agreed by the Parties. For the avoidance of doubt, (i) each of one Failover, one Failback and one change in configuration of the SmartCLOUD C2C Replication Service(s) stated in the CCF shall respectively be counted as one service token; (ii) any unused service token shall be forfeited upon the expiry of the relevant 12-month period; (iii) any recovery service(s) and/or any change in configuration of the SmartCLOUD C2C Replication Service(s) stated in the CCF after the expiry of the relevant Service Period Commitment shall be subject to additional charge as agreed by the Parties; and (iv) the number of service tokens stated in the Order shall be reduced on a pro-rata basis if the remaining period before expiry of the relevant

Service Period Commitment or termination of the SmartCLOUD C2C Replication Service(s) beyond the aforesaid 12-month period(s) is less than 12 months, and any use of the service tokens in such period exceeding the corresponding number of service tokens shall be subject to additional charge as agreed by the Parties.

- 4.3 Customer must ensure that all Virtual Machines are properly powered on, properly configured and in normal operation during the replication window. CPC shall not be held liable for any of the virtual machine operated under the SmartCLOUD C2C Replication Service(s) that is unable to be replicated, Failover or Failback if Customer fails to ensure the activities stated in this Clause.
- 4.4 Customer must respond in a timely manner to email alerts from CPC for any replication failure or warning in order to enable CPC to resolve such failure or warning. CPC shall not be held liable for the replication failure and the data stored under the SmartCLOUD Compute Service(s) and/or SmartCLOUD vONE Service(s) not being replicated if Customer fails to respond to the email alerts stated in this Clause.
- 4.5 Customer must ensure that there is enough free space at the Secondary Site for replication, Failover or Failback. CPC shall not be held liable for the Virtual Machine operated under the SmartCLOUD C2C Replication Service(s) that is unable to be replicated, Failover or Failback if Customer fails to fulfil the requirements stated in this Clause.
- 4.6 Customer shall be responsible for any OS and/or application setting after Failover and/or Failback.
- 4.7 For the Service named or with name similar to SmartCLOUD C2C Replication Service Enterprise (ZT), Customer shall promptly notify CPC prior to any snapshot revert or any major configuration change in related to SmartCLOUD C2C Replication Service Enterprise (ZT) in Primary Site. CPC shall not be held liable for any of the virtual machine operated under the SmartCLOUD C2C Replication Service(s) that is unable to be replicated, Failover or Failback if Customer fails to notify CPC for the activities stated in this Clause.

**Service Schedule 5 – For SmartCLOUD Global Server Load Balancing Service(s)**

- 5.1 Customer shall follow the instructions of CPC to configure its domain name record and must ensure that its domain name record points to a specific hostname as specified by CPC. CPC shall not be held liable for any failure of the SmartCLOUD Global Server Load Balancing Service(s) if Customer fails to follow the instructions stated in this Clause.
- 5.2 Customer acknowledges and agrees that the number of changes in configuration of the SmartCLOUD Global Server Load Balancing Service(s) stated in the CCF under each of the SmartCLOUD Global Server Load Balancing Service(s) is limited to the number of service tokens stated in the Order on a yearly basis commencing from the Service Commencement Date of the SmartCLOUD Global Server Load Balancing Service(s). Any unused service tokens in any of the aforesaid 12-month period cannot be carried over to the next 12-month period(s) (if any) and shall be forfeited. Any number of changes in configuration of the SmartCLOUD Global Server Load Balancing Service(s) stated in the CCF in any of the aforesaid 12-month period which exceeds the number of service tokens stated in the Order shall be subject to additional charge as agreed by the Parties. For the avoidance of doubt, (i) one change in configuration of the SmartCLOUD Global Server Load Balancing Service(s) stated in the CCF shall be counted as one service token; (ii) any unused service token shall be forfeited upon the expiry of the relevant 12-month period; (iii) any change in configuration of the SmartCLOUD Global Server Load Balancing Service(s) stated in the CCF after the expiry of the relevant Service Period Commitment shall be subject to additional charge as agreed by the Parties; and (iv) the number

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of service tokens stated in the Order shall be reduced on a pro-rata basis if the remaining period before expiry of the relevant Service Period Commitment or termination of the SmartCLOUD Global Server Load Balancing Service(s) beyond the aforesaid 12-month period(s) is less than 12 months, and any use of the service tokens in such period exceeding the corresponding number of service tokens shall be subject to additional charge as agreed by the Parties.

**Service Schedule 6 – For SmartCLOUD Local Server Load Balancing Service(s)**

6.1 Customer acknowledges and agrees that the number of changes in configuration of the SmartCLOUD Local Server Load Balancing Service(s) stated in the CCF under each of the SmartCLOUD Local Server Load Balancing Service(s) is limited to the number of service tokens stated in the Order on a yearly basis commencing from the Service Commencement Date of the SmartCLOUD Local Server Load Balancing Service(s). Any unused service tokens in any of the aforesaid 12-month period cannot be carried over to the next 12-month period(s) (if any) and shall be forfeited. Any number of changes in configuration of the SmartCLOUD Local Server Load Balancing Service(s) stated in the CCF in any of the aforesaid 12-month period which exceeds the number of service tokens stated in the Order shall be subject to additional charge as agreed by the Parties. For the avoidance of doubt, (i) one change in configuration of the SmartCLOUD Local Server Load Balancing Service(s) stated in the CCF shall be counted as one service token; (ii) any unused service token shall be forfeited upon the expiry of the relevant 12-month period; (iii) any change in configuration of the SmartCLOUD Local Server Load Balancing Service(s) stated in the CCF after the expiry of the relevant Service Period Commitment shall be subject to additional charge as agreed by the Parties; and (iv) the number of service tokens stated in the Order shall be reduced on a pro-rata basis if the remaining period before expiry of the relevant Service Period Commitment or termination of the SmartCLOUD Local Server Load Balancing Service(s) beyond the aforesaid 12-month period(s) is less than 12 months, and any use of the service tokens in such period exceeding the corresponding number of service tokens shall be subject to additional charge as agreed by the Parties.

**Service Schedule 7 – For SmartCLOUD Snapshot Storage Service(s)**

7.1 Customer must ensure that all Virtual Machines are properly powered on, properly configured and in normal operation during the snapshot window. CPC shall not be held liable for any failure of the SmartCLOUD Snapshot Storage Service(s) if Customer fails to ensure the activities stated in this Clause.

7.2 CPC will create a snapshot of the designated Virtual Machine upon receipt of a notice in writing or a call to our designated customer service hotline from Customer. Customer must within seventy-two (72) hours after the SmartCLOUD Snapshot Storage Service(s) provide CPC with instruction whether to commit snapshot or revert snapshot. If Customer fails to notify CPC for committing or reverting the snapshot, CPC is entitled not to provide the commit snapshot or revert snapshot service(s). CPC shall not be held liable for the integrity of data stored under the SmartCLOUD Snapshot Storage Service(s).

7.3 CPC will actively monitor the utilisation rate of the storage under the SmartCLOUD Snapshot Storage Service(s) and notify the Customer while the utilisation rate exceeds 85%. Customer shall provide CPC with instruction to commit or revert the snapshot in a timely manner. If Customer fails to provide such instruction and the utilisation rate is finally up to 100%, CPC shall not be held liable for the integrity of data stored under the SmartCLOUD Snapshot Storage Service(s) and the outage of the Virtual Machine(s) (if any).

7.4 Customer acknowledges and agrees that each of the SmartCLOUD Snapshot Storage Service(s) is limited to the number of service tokens stated in the Order on a yearly basis commencing from the Service Commencement Date of the SmartCLOUD Snapshot Storage Service(s). Any unused service tokens in any of the aforesaid 12-month period cannot be carried over to the next 12-month period(s) (if any) and shall be forfeited. The snapshot taken in any of the aforesaid 12-month period which exceeds the number of service tokens stated in the Order shall be subject to additional charge as agreed by the Parties. For the avoidance of doubt, (i) one snapshot plus commit snapshot is counted as one service token, and one snapshot plus revert snapshot is counted as one service token; (ii) any unused service token shall be forfeited upon the expiry of the relevant 12-month period; (iii) any snapshot taken after the expiry of the relevant Service Period Commitment shall be subject to additional charge as agreed by the Parties; and (iv) the number of service tokens stated in the Order shall be reduced on a pro-rata basis if the remaining period before expiry of the relevant Service Period Commitment or termination of the SmartCLOUD Snapshot Storage Service(s) beyond the aforesaid 12-month period(s) is less than 12 months, and any use of the service tokens in such period exceeding the corresponding number of service tokens shall be subject to additional charge as agreed by the Parties.

**Service Schedule 8 – For SmartCLOUD vONE Service(s)**

8.1 Customer shall reserve resources used in the SmartCLOUD vONE Service(s) with capacity and specification determined and advised by CPC for the provisioning of virtual machines used for the management of the SmartCLOUD vONE Service(s).

8.2 Customer acknowledges and agrees to provide any information required for the provisioning, maintenance and support of the SmartCLOUD vONE Service(s), including without limitation software licenses, administrative credentials and remote access to the service management platform and virtual machine(s) associated with the SmartCLOUD vONE Service(s).

8.3 Customer shall provide approvals or consent to CPC in a timely manner which is necessary for CPC for the provisioning, maintenance and support of the SmartCLOUD vONE Service(s).

8.4 CPC will inform the Customer that the SmartCLOUD vONE Service(s) has finished provisioning in accordance with SOW and is ready for acceptance test. CPC shall perform the acceptance test in accordance with the Service Acceptance Criteria. The Customer shall in good faith and not unreasonably withhold the signing of the acceptance test. The Service Commencement Date shall be the date on which the Customer signs the acceptance test provided that no problem reported by the Customer in the next five (5) working days thereafter.

8.5 Customer agrees that its acceptance of the acceptance test shall be final and any further modification thereafter required by Customer shall be considered as a change request.

8.6 Customer shall reserve at least one hot spare node per cluster with enough spare compute capacity in order to be able to use VMWare high availability features in the event of hardware failure of a cloud node. CPC shall not be held liable for the virtual machines operated under the SmartCLOUD vONE Service(s) not being failed over to other available node(s) and the outage of virtual machine(s) if Customer fails to fulfil the requirements stated in this Clause.

8.7 Customer acknowledges and agrees that the number of changes in configuration of the SmartCLOUD vONE Service(s) stated in the CCF under each of the SmartCLOUD vONE Service(s) is limited to the number of service tokens stated in the Order on a yearly basis commencing from the Service Commencement Date (as set out in Clause 8.4) of the SmartCLOUD vONE Service(s). Any unused service tokens in

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any of the aforesaid 12-month period cannot be carried over to the next 12-month period(s) (if any) and shall be forfeited. Any number of changes in configuration of the SmartCLOUD vONE Service(s) stated in the CCF in any of the aforesaid 12-month period which exceeds the number of service tokens stated in the Order shall be subject to additional charge as agreed by the Parties. For the avoidance of doubt, (i) one change in configuration of the SmartCLOUD vONE Service(s) stated in the CCF shall be counted as one service token; (ii) any unused service token shall be forfeited upon the expiry of the relevant 12-month period; (iii) any change in configuration of the SmartCLOUD vONE Service(s) stated in the CCF after the expiry of the relevant Service Period Commitment shall be subject to additional charge as agreed by the Parties; and (iv) the number of service tokens stated in the Order shall be reduced on a pro-rata basis if the remaining period before expiry of the relevant Service Period Commitment or termination of the SmartCLOUD vONE Service(s) beyond the aforesaid 12-month period(s) is less than 12 months, and any use of the service tokens in such period exceeding the corresponding number of service tokens shall be subject to additional charge as agreed by the Parties.

8.8 The Customer shall through the access to the User Interface (i.e. SmartCLOUD vONE management portal) as mentioned in Clause 1.5 to install VMWare Tools to all its virtual machines and update the VMWare Tools regularly and/or as advised by CPC from time to time.

**Service Schedule 9 – For SmartCLOUD V2C Replication Service(s)**

- 9.1 Customer shall reserve resources used in Customer operated VMWare platform with capacity and specification determined and advised by CPC for the provisioning of the virtual machines used for the management of the SmartCLOUD V2C Replication Service(s). CPC shall not be held liable for any of the virtual machine operated under the SmartCLOUD V2C Replication Service(s) that is unable to be replicated, Failover or Failback if Customer fails to fulfil the requirements stated in this Clause.
- 9.2 Customer acknowledges and agrees to provide any information required for the provisioning, maintenance and support of the SmartCLOUD V2C Replication Service(s), including without limitation software licenses, administrative credentials and remote access to the Customer operated VMWare platform and virtual machine(s) associated with the SmartCLOUD V2C Replication Service(s).
- 9.3 The Service Commencement Date of the SmartCLOUD V2C Replication Service(s) is the date on which the first scheduled replication from any of the virtual machines at a Primary Site to the Virtual Machine(s) of a Secondary Site is successfully completed.
- 9.4 CPC will provide the recovery service(s) of the SmartCLOUD V2C Replication Service(s) upon Customer's request and in accordance with SOW (if any). Customer acknowledges and agrees that the number of use of the recovery service(s) and the number of changes in configuration of the SmartCLOUD V2C Replication Service(s) stated in the CCF are limited to the number of service tokens stated in the Order per virtual machine on a yearly basis commencing from the Service Commencement Date (as set out in Clause 9.3) of the SmartCLOUD V2C Replication Service(s). Any unused service tokens in any of the aforesaid 12-month period cannot be carried over to the next 12-month period(s) (if any) and shall be forfeited. Any use of recovery service(s) and/or any number of changes in configuration of the SmartCLOUD V2C Replication Service(s) stated in the CCF in any of the aforesaid 12-month period which exceeds the number of service tokens stated in the Order shall be subject to additional charge as agreed by the Parties. For the avoidance of doubt, (i) each of one Failover, one Failback and one change in configuration of the SmartCLOUD V2C Replication Service(s) stated in the CCF

shall respectively be counted as one service token; (ii) any unused service token shall be forfeited upon the expiry of the relevant 12-month period; (iii) any recovery service(s) and/or any change in configuration of the SmartCLOUD V2C Replication Service(s) stated in the CCF after the expiry of the relevant Service Period Commitment shall be subject to additional charge as agreed by the Parties; and (iv) the number of service tokens stated in the Order shall be reduced on a pro-rata basis if the remaining period before expiry of the relevant Service Period Commitment or termination of the SmartCLOUD V2C Replication Service(s) beyond the aforesaid 12-month period(s) is less than 12 months, and any use of the service tokens in such period exceeding the corresponding number of service tokens shall be subject to additional charge as agreed by the Parties.

- 9.5 Customer must ensure that all virtual machines are properly powered on, properly configured and in normal operation during the replication window. CPC shall not be held liable for any of the virtual machine operated under the SmartCLOUD V2C Replication Service(s) that is unable to be replicated, Failover or Failback if Customer fails to ensure the activities stated in this Clause.
- 9.6 Customer must respond in a timely manner to email alerts from CPC for any replication failure or warning in order to enable CPC to resolve such failure or warning. CPC shall not be held liable for the replication failure and the data stored under the Customer operated VMWare environment not being replicated if Customer fails to respond the email alerts stated in this Clause.
- 9.7 Customer must ensure that there is enough free space at the Secondary Site for replication, Failover or Failback. CPC shall not be held liable for the virtual machine operated under the SmartCLOUD V2C Replication Service(s) that is unable to be replicated, Failover or Failback if Customer fails to fulfil the requirements stated in this Clause.
- 9.8 Customer shall be responsible for any OS and/or application setting after Failover and/or Failback.
- 9.9 For the Service named or with name similar to SmartCLOUD V2C Replication Service Enterprise (ZT), Customer shall promptly notify CPC prior to any snapshot revert, Failover or any major configuration change in related to SmartCLOUD V2C Replication Service Enterprise (ZT) in Primary Site. CPC shall not be held liable for any of the virtual machine operated under the SmartCLOUD V2C Replication Service(s) that is unable to be replicated, Failover or Failback if Customer fails to notify CPC for the activities stated in this Clause.

**Service Schedule 10 – For SmartCLOUD DaaS Service(s)**

- 10.1 For supporting SmartCLOUD DaaS Service(s), the Customer shall install VMware tools, VMware DaaS agent, VMware view agent and any other agent software to all its virtual desktops and update them regularly and/or as advised by CPC from time to time. CPC shall not be held liable for any failure of SmartCLOUD DaaS Service(s) if Customer fails to fulfil the requirements stated in this Clause.
- 10.2 The Customer shall manage all end user issues, including without limitation client devices, virtual desktop images and applications, and data within the images and virtual desktops.
- 10.3 The Customer shall manage the Customer operated infrastructure in conjunction with the use of SmartCLOUD DaaS Service(s), including without limitation active directory configuration and administration, network connectivity and bandwidth from Customer to the SmartCLOUD DaaS Service(s) platform, and VPN hardware and software and their status.

**Service Schedule 11 – For SmartCLOUD P2C Replication Service(s)**

- 11.1 Customer must ensure that the network connectivity between the SmartCLOUD P2C Replication Local Appliance and the SmartCLOUD P2C Replication Service platform is in good

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condition such that the SmartCLOUD P2C Replication Local Appliance is able to access the SmartCLOUD P2C Replication Service platform at all times. CPC shall not be held liable for any failure of SmartCLOUD P2C Replication Service(s) if Customer fails to fulfil the requirements stated in this Clause.

- 11.2 Customer acknowledges and agrees to provide any information required for the provisioning, maintenance and support of the SmartCLOUD P2C Replication Service(s), including without limitation administrative credentials and remote access to the Customer operated physical machine(s) under the SmartCLOUD P2C Replication Service(s).
- 11.3 The Service Commencement Date of the SmartCLOUD P2C Replication Service(s) is the date on which the first scheduled replication from any of the Customer operated physical machine(s) at a Primary Site to the Virtual Machine(s) of a Secondary Site is successfully completed and email notification of such completion is sent to Customer.
- 11.4 CPC will provide the recovery service(s) of the SmartCLOUD P2C Replication Service(s) upon Customer's request and in accordance with SOW (if any). Customer acknowledges and agrees that the number of use of the recovery service(s) and the number of changes in configuration of the SmartCLOUD P2C Replication Service(s) stated in the CCF are limited to the number of service tokens stated in the Order per physical machine on a yearly basis commencing from the Service Commencement Date (as set out in Clause 11.3) of the SmartCLOUD P2C Replication Service(s). Any unused service tokens in any of the aforesaid 12-month period cannot be carried over to the next 12-month period(s) (if any) and shall be forfeited. Any use of recovery service(s) and/or any number of changes in configuration of the SmartCLOUD P2C Replication Service(s) stated in the CCF in any of the aforesaid 12-month period which exceeds the number of service tokens stated in the Order shall be subject to additional charge as agreed by the Parties. For the avoidance of doubt, (i) each of one Failover and one change in configuration of the SmartCLOUD P2C Replication Service(s) stated in the CCF shall respectively be counted as one service token; (ii) any unused service token shall be forfeited upon the expiry of the relevant 12-month period; (iii) any recovery service(s) and/or any change in configuration of the SmartCLOUD P2C Replication Service(s) stated in the CCF after the expiry of the relevant Service Period Commitment shall be subject to additional charge as agreed by the Parties; and (iv) the number of service tokens stated in the Order shall be reduced on a pro-rata basis if the remaining period before expiry of the relevant Service Period Commitment or termination of the SmartCLOUD P2C Replication Service(s) beyond the aforesaid 12-month period(s) is less than 12 months, and any use of the service tokens in such period exceeding the corresponding number of service tokens shall be subject to additional charge as agreed by the Parties.
- 11.5 Customer must ensure that all Customer operated physical machines are properly powered on, properly configured and in normal operation during the replication window. CPC shall not be held liable for the replication failure and the data stored under the Customer operated physical machine(s) not being replicated if Customer fails to ensure the activities stated in this Clause.
- 11.6 Upon completion of each replication, CPC will send an email alert to Customer indicating whether such replication is successfully completed. Customer must respond in a timely manner to email alerts from CPC (so that CPC can resolve the replication failure in the event that the replication fails). CPC shall not be held liable for the replication failure and the data stored under the Customer operated physical machine(s) not being replicated if Customer fails to respond the email alerts stated in this Clause.
- 11.7 Customer must ensure that there is enough free space at the Secondary Site for replication, Failover or Failback. CPC shall

not be held liable for the Customer operated physical machine(s) that is unable to be replicated, Failover or Failback if Customer fails to fulfil the requirements stated in this Clause.

- 11.8 Customer shall be responsible for any OS and/or application setting after Failover and/or Failback.

**Service Schedule 12 – For SmartCLOUD M@il Service(s)**

- 12.1 Customer shall follow the instructions of CPC to configure its domain name record and must ensure that such domain name record points to a specific hostname as specified by CPC. CPC shall not be held liable for any failure of the SmartCLOUD M@il Service(s) if Customer fails to follow the instructions stated in this Clause.

**Service Schedule 13 – For SmartCLOUD Professional Service(s)**

- 13.1 Customer acknowledges and agrees to provide any information required for the provisioning, maintenance and support of the SmartCLOUD Professional Service(s), including without limitation software licenses, administrative credentials and remote access to the server or client system(s) associated with the SmartCLOUD Professional Service(s).
- 13.2 Except pre-approved changes as defined in the Order and/or SOW (if any), Customer shall provide approvals or consents to CPC in a timely manner which is necessary for CPC for the provisioning, maintenance and support of the SmartCLOUD Professional Service(s).
- 13.3 Customer acknowledges and agrees that CPC shall not be responsible to provide any support relating to any matter beyond the scope as provided in the Order and/or the SOW(if any). At the sole discretion of CPC and upon request of the Customer, CPC will work with the Customer to identify appropriate replacement solution options and to assist the Customer to procure such solution for any such matter and in such circumstances. CPC reserves the right to impose relevant additional Charges on the Customer.
- 13.4 Customer shall not (i) install any additional software to; (ii) alter any software configuration to; and/or (iii) uninstall any software from, the server or client system(s) under SmartCLOUD Professional Service(s) without obtaining prior written approval from CPC.

**Service Schedule 14 – For SmartCLOUD A2C Backup Service(s)**

- 14.1 Customer must ensure that there is enough free space available on CPC's SmartCLOUD A2C Backup Service platform for storing data files. CPC shall not be held liable for any data files stored under the SmartCLOUD A2C Backup Service(s) not able to be backed up if Customer fails to fulfil the requirements stated in this Clause.
- 14.2 Customer shall (i) at all times keep its encryption password of each backup job strictly confidential and safe; and (ii) monitor and manage its backup jobs. CPC shall not be held liable for any data stored under the SmartCLOUD A2C Backup Service(s) not able to be restored due to Customer's failure to comply with the requirements stated in this Clause.
- 14.3 The Customer shall promptly notify CPC any configuration changes, failure and/or maintenance of the Customer's Veeam backup platform in order to enable CPC to provide the SmartCLOUD A2C Backup Service(s). CPC shall not be held liable for any failure of SmartCLOUD A2C Backup Service(s) if Customer fails to fulfil the requirements stated in this Clause.
- 14.4 The Customer acknowledges that modifications to the Customer's Veeam backup platform (such as a release of the Veeam software of Customer which is different from the release of the Veeam software of CPC) or to the Customer Environment may cause interoperability problems or malfunctions in the Customer's Veeam backup platform or the Customer Environment. The Customer acknowledges and agrees that it is the Customer's responsibility to maintain, at its sole costs and expenses, the Customer's Veeam backup

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platform and/or Customer Environment to be interoperable with CPC's SmartCLOUD platform so as to assure the availability and accessibility of the Services.

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